

109TH CONGRESS
1ST SESSION

H. R. 2388

To amend title 18, United States Code, to provide assured punishment for violent crimes against children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2005

Mr. GREEN of Wisconsin introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide assured punishment for violent crimes against children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prevention and Deter-
5 rence of Crimes Against Children Act of 2005”.

6 **SEC. 2. ASSURED PUNISHMENT FOR VIOLENT CRIMES**
7 **AGAINST CHILDREN.**

8 (a) SPECIAL SENTENCING RULE.—Subsection (d) of
9 section 3559 of title 18, United States Code, is amended
10 to read as follows:

1 “(d) MANDATORY MINIMUM TERMS OF IMPRISON-
2 MENT FOR VIOLENT CRIMES AGAINST CHILDREN.—A
3 person who is convicted of a Federal crime of violence
4 against the person of an individual who has not attained
5 the age of 18 years shall, unless a greater mandatory min-
6 imum sentence of imprisonment is otherwise provided by
7 law and regardless of any maximum term of imprisonment
8 otherwise provided for the offense—

9 “(1) if the crime of violence results in the death
10 of a person who has not attained the age of 18
11 years, be sentenced to death or life in prison;

12 “(2) if the crime of violence is a kidnapping,
13 sexual assault, or maiming, or results in serious bod-
14 ily injury (as defined in section 1365) be imprisoned
15 for life or any term of years not less than 30;

16 “(3) if the crime of violence results in bodily in-
17 jury (as defined in section 1365), be imprisoned for
18 life or for any term of years not less than 20;

19 “(4) if a dangerous weapon was used during
20 and in relation to the crime of violence, be impris-
21 oned for life or for any term of years not less than
22 15; and

23 “(5) in any other case, be imprisoned for life or
24 for any term of years not less than 10.”.

1 **SEC. 3. ENSURING FAIR AND EXPEDITIOUS FEDERAL COL-**
2 **LATERAL REVIEW OF CONVICTIONS FOR**
3 **KILLING A CHILD.**

4 (a) LIMITS ON CASES.—Section 2254 of title 28,
5 United States Code, is amended by adding at the end the
6 following:

7 “(j)(1) A court, justice, or judge shall not have juris-
8 diction to consider any claim relating to the judgment or
9 sentence in an application described under paragraph (2),
10 unless the applicant shows that the claim qualifies for con-
11 sideration on the grounds described in subsection (e)(2).
12 Any such application that is presented to a court, justice,
13 or judge other than a district court shall be transferred
14 to the appropriate district court for consideration or dis-
15 missal in conformity with this subsection, except that a
16 court of appeals panel must authorize any second or suc-
17 cessive application in conformity with section 2244 before
18 any consideration by the district court.

19 “(2) This subsection applies to an application for a
20 writ of habeas corpus on behalf of a person in custody
21 pursuant to the judgment of a State court for a crime
22 that involved the killing of a individual who has not at-
23 tained the age of 18 years.

24 “(3) For an application described in paragraph (2),
25 the following requirements shall apply in the district court:

1 “(A) Any motion by either party for an evi-
2 dentiary hearing shall be filed and served not later
3 than 90 days after the State files its answer or, if
4 no timely answer is filed, the date on which such an-
5 swer is due.

6 “(B) Any motion for an evidentiary hearing
7 shall be granted or denied not later than 30 days
8 after the date on which the party opposing such mo-
9 tion files a pleading in opposition to such motion or,
10 if no timely pleading in opposition is filed, the date
11 on which such pleading in opposition is due.

12 “(C) Any evidentiary hearing shall be—

13 “(i) convened not less than 60 days after
14 the order granting such hearing; and

15 “(ii) completed not more than 150 days
16 after the order granting such hearing.

17 “(D) A district court shall enter a final order,
18 granting or denying the application for a writ of ha-
19 beas corpus, not later than 15 months after the date
20 on which the State files its answer or, if no timely
21 answer is filed, the date on which such answer is
22 due, or not later than 60 days after the case is sub-
23 mitted for decision, whichever is earlier.

24 “(E) If the district court fails to comply with
25 the requirements of this paragraph, the State may

1 petition the court of appeals for a writ of mandamus
2 to enforce the requirements. The court of appeals
3 shall grant or deny the petition for a writ of man-
4 damus not later than 30 days after such petition is
5 filed with the court.

6 “(4) For an application described in paragraph (2),
7 the following requirements shall apply in the court of ap-
8 peals:

9 “(A) A timely filed notice of appeal from an
10 order issuing a writ of habeas corpus shall operate
11 as a stay of that order pending final disposition of
12 the appeal.

13 “(B) The court of appeals shall decide the ap-
14 peal from an order granting or denying a writ of ha-
15 beas corpus—

16 “(i) not later than 120 days after the date
17 on which the brief of the appellee is filed or, if
18 no timely brief is filed, the date on which such
19 brief is due; or

20 “(ii) if a cross-appeal is filed, not later
21 than 120 days after the date on which the ap-
22 pellant files a brief in response to the issues
23 presented by the cross-appeal or, if no timely
24 brief is filed, the date on which such brief is
25 due.

1 “(C)(i) Following a decision by a panel of the
2 court of appeals under subparagraph (B), a petition
3 for panel rehearing is not allowed, but rehearing by
4 the court of appeals en banc may be requested. The
5 court of appeals shall decide whether to grant a peti-
6 tion for rehearing en banc not later than 30 days
7 after the date on which the petition is filed, unless
8 a response is required, in which case the court shall
9 decide whether to grant the petition not later than
10 30 days after the date on which the response is filed
11 or, if no timely response is filed, the date on which
12 the response is due.

13 “(ii) If rehearing en banc is granted, the court
14 of appeals shall make a final determination of the
15 appeal not later than 120 days after the date on
16 which the order granting rehearing en banc is en-
17 tered.

18 “(D) If the court of appeals fails to comply
19 with the requirements of this paragraph, the State
20 may petition the Supreme Court or a justice thereof
21 for a writ of mandamus to enforce the requirements.

22 “(5)(A) The time limitations under paragraphs (3)
23 and (4) shall apply to an initial application described in
24 paragraph (2), any second or successive application de-
25 scribed in paragraph (2), and any redetermination of an

1 application described in paragraph (2) or related appeal
2 following a remand by the court of appeals or the Supreme
3 Court for further proceedings.

4 “(B) In proceedings following remand in the district
5 court, time limits running from the time the State files
6 its answer under paragraph (3) shall run from the date
7 the remand is ordered if further briefing is not required
8 in the district court. If there is further briefing following
9 remand in the district court, such time limits shall run
10 from the date on which a responsive brief is filed or, if
11 no timely responsive brief is filed, the date on which such
12 brief is due.

13 “(C) In proceedings following remand in the court of
14 appeals, the time limit specified in paragraph (4)(B) shall
15 run from the date the remand is ordered if further briefing
16 is not required in the court of appeals. If there is further
17 briefing in the court of appeals, the time limit specified
18 in paragraph (4)(B) shall run from the date on which a
19 responsive brief is filed or, if no timely responsive brief
20 is filed, from the date on which such brief is due.

21 “(6) The failure of a court to meet or comply with
22 a time limitation under this subsection shall not be a
23 ground for granting relief from a judgment of conviction
24 or sentence, nor shall the time limitations under this sub-
25 section be construed to entitle a capital applicant to a stay

1 of execution, to which the applicant would otherwise not
2 be entitled, for the purpose of litigating any application
3 or appeal.”.

4 (b) VICTIMS’ RIGHTS IN HABEAS CASES.—Section
5 3771(b) of title 18, United States Code, is amended by
6 adding at the end the following: “The rights established
7 for crime victims by this section shall also be extended
8 in a Federal habeas corpus proceeding arising out of a
9 State conviction to victims of the State offense at issue.”

10 (c) APPLICATION TO PENDING CASES.—

11 (1) IN GENERAL.—The amendment made by
12 this section apply to cases pending on the date of
13 the enactment of this Act as well as to cases com-
14 menced on and after that date.

15 (2) SPECIAL RULE FOR TIME LIMITS.—In a
16 case pending on the date of the enactment of this
17 Act, if the amendment made by subsection (a) pro-
18 vides that a time limit runs from an event or time
19 that has occurred before that date, the time limit
20 shall instead run from that date.

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